

MT LEGISLATIVE HISTORY

Chapter 511 1983

Bill (H) 855 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) FEB 21 ☒ C

Hearing Date(s) MAR 19 ☒ C

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Date Out FEB 21 ☒ C

MAR 19 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 855

INTRODUCED BY RAMIREZ, SPAETH

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Judiciary.
February 21, 1983	Committee recommend bill do pass. Report adopted.
February 22, 1983	Bill printed and placed on members' desks. Second reading, do pass.
February 23, 1983	Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 19, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 24, 1983	Returned to House with amendments.
March 31, 1983	Second reading, amendments concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *855*
 2 INTRODUCED BY *Spencer Smith*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
 5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO
 6 REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE
 7 TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT
 8 OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE
 9 APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING
 10 SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337
 11 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452,
 12 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603,
 13 MCA; AND PROVIDING AN APPLICABILITY DATE."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Section 72-2-101, MCA, is amended to read:
 17 "72-2-101. Renunciation of succession. (1) A person or
 18 his personal representative or the representative of an
 19 incapacitated or protected person who is an heir, devisee,
 20 person succeeding to a renounced interest, ~~donee, appointee,~~
 21 ~~grantee, recipient, or~~ beneficiary under a testamentary
 22 ~~instrument, or appointee under a power of appointment~~
 23 ~~exercised by a testamentary instrument trust or other~~
 24 ~~nontestamentary instrument or under a power of appointment~~
 25 ~~exercised by a testamentary or nontestamentary instrument,~~

1 ~~surviving joint owner or surviving joint tenant, or~~
 2 ~~beneficiary or owner of an insurance contract or any~~
 3 ~~incident of ownership therein~~ may renounce, in whole or in
 4 part, the right of succession to any property or interest
 5 therein, including a future interest, by filing a written
 6 renunciation under this section. The instrument shall:
 7 (a) describe the property or interest renounced;
 8 (b) be signed by the person renouncing; and
 9 (c) declare the renunciation and the extent thereof.
 10 ~~(d) An instrument renouncing a present interest~~
 11 ~~shall be filed within 9 months after the death of the~~
 12 ~~decendent or the donee of the power~~
 13 ~~(e) An instrument renouncing a future interest may be~~
 14 ~~filed not later than 9 months after the event determining~~
 15 ~~that the taker of the property or interest is finally~~
 16 ~~ascertained and his interest is indefeasibly vested~~
 17 ~~(f) The renunciation must be filed in the court of the~~
 18 ~~county in which proceedings have been commenced for the~~
 19 ~~administration of the estate of the deceased owner or~~
 20 ~~deceased donee of the power or if they have not been~~
 21 ~~commenced in which they could be commenced. A copy of the~~
 22 ~~renunciation shall be delivered in person or mailed by~~
 23 ~~registered or certified mail to any personal representative~~
 24 ~~or other fiduciary of the decedent or donee of the power, if~~
 25 ~~real property or an interest therein is renounced, a copy of~~

INTRODUCED BILL

the renunciation may be recorded in the office of the county clerk of the county in which the real estate is situated.

(2) The court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce, modify, amend, or otherwise deviate from any restriction on or power of administration, management, or allocation of benefit upon finding that such restriction on the exercise of the power may defeat or impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

(3) The instrument of renunciation must be received by the transferor of the interest, his legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes, the instrument must be received not later than the date which is 9 months after the later of the date on which the transfer creating the interest in a person is made or the date on which the person attains 18 years of age. If the circumstances that

establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument must also be filed in the court of the county where proceedings concerning the decedent's estate are pending or where they would be pending if commenced. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the county clerk and recorder of the county in which the real estate is situated. No person entitled to a copy of the instrument is liable for any proper distribution or disposition made without actual notice of the renunciation, and no person making a proper distribution or disposition in reliance upon the renunciation is liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(3)(4) Unless the decedent or donee of the power transferor of the interest has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the appointment was exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had

1 predeceased the decedent or the donee of the power. A
2 renunciation relates back for all purposes to the date of
3 the death of the decedent or the donee of the power.

4 ~~(47)(51)~~ (a) The right to renounce property or an
5 interest therein is barred by:

6 (i) an assignment, conveyance, encumbrance, pledge, or
7 transfer of property or interest, or a contract therefor;

8 (ii) a written waiver of the right to renounce;

9 (iii) an acceptance of the property or interest or
10 benefit thereunder; or

11 (iv) a sale of the property or interest under judicial
12 sale made before the renunciation is effected.

13 (b) The right to renounce exists notwithstanding any
14 limitation on the interest of the person renouncing in the
15 nature of a spendthrift provision or similar restriction.

16 (c) A renunciation or a written waiver of the right to
17 renounce is binding upon the person renouncing or person
18 waiving and all persons claiming through or under him.

19 ~~(5)(51)~~ This section does not abridge the right of a
20 person to waive, release, disclaim, or renounce property or
21 an interest therein under any other statute.

22 ~~(6) An interest in property which exists on July 1,~~
23 ~~1975, as to which, if a present interest, the time for~~
24 ~~fitting a renunciation under the Uniform Probate Code has not~~
25 ~~expired, or if a future interest, the interest has not~~

1 ~~become indefeasibly vested or the taker finally ascertained,~~
2 ~~may be renounced within 9 months after July 1, 1975.~~

3 (7) Within 30 days of receipt of a written instrument
4 of renunciation by the transferor of the interest, the
5 renouncer, his legal representative, the personal
6 representative of the decedent, the trustee of any trust in
7 which the interest being renounced exists, or the holder of
8 the legal title to the property to which the interest
9 relates, as the case may be, shall attempt to notify in
10 writing those persons who are known or ascertainable with
11 reasonable diligence who are recipients or potential
12 recipients of the renounced interest of the renunciation and
13 the interest or potential interest such recipient will
14 receive as a result of the renunciation.

15 (8) Any interest in property which exists on July 1,
16 1983, may be renounced after July 1, 1983, as provided in
17 this section. An interest that has arisen prior to July 1,
18 1983, in any person other than the person renouncing is not
19 destroyed or diminished by any action of the person
20 renouncing taken under this section."

21 Section 2. Section 72-16-331, MCA, is amended to read:

22 "72-16-331. Definitions for alternate valuation
23 purposes. As used in 72-16-331 through 72-16-342 and
24 [sections 17 through 23], the following definitions apply:

25 (1) "Active management" means the making of management

1 ~~decisions of a business, other than the daily operating~~
2 ~~decisions.~~

3 ~~(1) "Adjusted value" means:~~

4 (a) in the case of a gross estate, the gross value of
5 all transfers subject to the tax imposed by this part,
6 determined without regard to 72-16-331 through 72-16-342 and
7 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
8 mortgages and indebtedness;

9 (b) in the case of real or personal property, the
10 value of the property for the purposes of this part,
11 determined without regard to 72-16-331 through 72-16-342 and
12 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
13 mortgages and indebtedness.

14 ~~(2) "Agreement" means a written agreement signed by~~
15 ~~each person in being who has an interest, whether or not he~~
16 ~~is in possession, in any property designated in such~~
17 ~~agreement consenting to the application of 72-16-333 with~~
18 ~~respect to such property.~~

19 ~~(3) "Department" means the department of revenue.~~

20 ~~(5) "Disabled" means an individual who has a mental or~~
21 ~~physical impairment that renders him unable to materially~~
22 ~~participate in the operation of a farm or other business.~~

23 ~~(6) "Eligible qualified heir" means a qualified heir~~
24 ~~who:~~

25 ~~(a) is the surviving spouse of the decedent;~~

1 ~~(b) has not attained 21 years of age;~~

2 ~~(c) is disabled; or~~

3 ~~(d) is a student.~~

4 ~~(4) "Farm" means~~ truck farms, ranches, nurseries,
5 ranges, greenhouses, orchards, woodlands, or structures used
6 primarily for raising agricultural or horticultural
7 commodities. The term includes stock, dairy animals,
8 poultry, fur-bearing animals, and fruit.

9 ~~(5) "Farming purposes" means:~~

10 (a) cultivating the soil or raising or harvesting any
11 agricultural or horticultural commodity, including the
12 raising, shearing, feeding, caring for, training, and
13 managing of animals on a farm;

14 (b) handling, drying, packing, grading, or storing on
15 a farm any agricultural or horticultural commodity in its
16 unmanufactured state, but only if the owner, tenant, or
17 operator of the farm regularly produces more than one-half
18 of the commodity so treated; or

19 (c) (i) planting, cultivating, caring for, or cutting
20 trees; or

21 (ii) preparing, other than milling, trees for market.

22 ~~(6) "Internal Revenue Code" means the Internal~~
23 ~~Revenue Code of 1954. A reference to a specific section of~~
24 ~~that code is a reference to that section as it may be~~
25 ~~labeled or amended.~~

1 ~~(77)~~(10) "Involuntary conversion" means a compulsory or
2 involuntary conversion within the meaning of section 1033 of
3 the Internal Revenue Code.

4 ~~(8)~~(11) "Material participation" is determined in a
5 manner similar to the manner used for the purposes of
6 section 1402(a)(1) of the Internal Revenue Code.

7 ~~(9)~~(12) (a) "Member of the family" means, with respect
8 to any individual, only the individual's:

9 (i) ancestor or:

10 ~~(iii) spouse and the lineal descendants of the~~
11 ~~individual's spouse;~~

12 ~~(iii) lineal descendant;~~

13 ~~(iv) lineal descendants of the individual's parents.~~

14 ~~(b) Member of the family also includes a spouse of:~~

15 ~~(i) the individual's lineal descendants;~~

16 ~~(iii) the lineal descendants of the individual's spouse;~~

17 or

18 ~~(iii) the lineal descendants of the individual's~~
19 ~~parents.~~

20 ~~(c) a--nearest--descendant--of--a--grandparent--of--the~~
21 ~~individual--the--spouse-of-the-individual--or--the--spouse-of~~
22 ~~any-such-descendant. For purposes of the preceding sentence~~
23 ~~this subsection (12), a legally adopted child of an~~
24 ~~individual is treated as a child of the individual by blood.~~

25 ~~(13) "Net share rental" means the excess of:~~

1 ~~(a) the value of the produce received by a lessor of~~
2 ~~land on which such produce is grown;~~

3 ~~(b) divided by the cash operating expenses of growing~~
4 ~~such produce which, under the lease, are paid by the lessor.~~

5 ~~(14) "Qualified exchange property" means real property~~
6 ~~that is to be used for the qualified use set forth in~~
7 ~~subsection (18).~~

8 ~~(10)~~(15) "Qualified heir" means, with respect to any
9 property, a member of the decedent's family who acquired the
10 property or to whom the property passed from the decedent.
11 If a qualified heir disposes of any interest in qualified
12 real property to any member of his family, such member shall
13 thereafter be treated as the qualified heir with respect to
14 such interest.

15 ~~(11)~~(16) "Qualified real property" means real property
16 located in this state that was acquired from or passed from
17 the decedent to a qualified heir of the decedent and that on
18 the date of the decedent's death was being used for a
19 qualified use ~~by the decedent or a member of the decedent's~~
20 ~~family, but only if:~~

21 (a) 50% or more of the adjusted value of the gross
22 estate consists of the adjusted value of real or personal
23 property that:

24 (i) on the date of the decedent's death was being used
25 for a qualified use ~~by the decedent or a member of the~~

1 ~~decedent's family;~~ and

2 (ii) was acquired from or passed from the decedent to a

3 qualified heir of the decedent;

4 (b) 25% or more of the adjusted value of the gross

5 estate consists of the adjusted value of real property that

6 meets the requirements of (a)(ii) and (c) of this

7 subsection;

8 (c) during the 8-year period ending on the date of the

9 decedent's death there have been periods aggregating 5 years

10 or more during which:

11 (i) the real property was owned by the decedent or a

12 member of the decedent's family and used for a qualified use

13 ~~by the decedent or a member of the decedent's family;~~ and

14 (ii) there was material participation by the decedent

15 or a member of the decedent's family in the operation of the

16 farm or other business; and

17 (d) the real property is designated in the agreement

18 referred to in subsection ~~(2)~~ (3) of this section; and

19 ~~(e) if an election is made with respect to qualified~~

20 ~~woodland, trees growing on such woodland may not be treated~~

21 ~~as a crop.~~

22 ~~(12)(17) (a) "Qualified replacement property" means:~~

23 (i) in the case of an involuntary conversion as

24 described in section 1033(a)(1) of the Internal Revenue

25 Code, any real property into which the real property is

1 converted;

2 (ii) in the case of an involuntary conversion as

3 described in section 1033(a)(2) of the Internal Revenue

4 Code, any real property purchased by the qualified heir

5 during the period specified in section 1033(a)(2) ~~(18)(18)~~ of

6 the Internal Revenue Code for the purpose of replacing the

7 qualified real property.

8 (b) "Qualified replacement property" only includes

9 property that is to be used for the qualified use set forth

10 in (a) or (b) of subsection ~~(12)~~ (18) of this section under

11 which the qualified real property qualified under 72-16-333.

12 ~~(12)(18) (a) "Qualified use" means devotion of the~~

13 ~~property to any of the following:~~

14 (i) use as a farm for farming purposes; or

15 (ii) use in a trade or business other than the trade or

16 business of farming.

17 (b) In the case of real property that meets the

18 requirements of subsection ~~(12)(16)(c)~~ (18)(16)(c), residential

19 buildings and related improvements on the real property

20 occupied on a regular basis by the owner or lessee of the

21 real property or by persons employed by the owner or lessee

22 for the purpose of operating or maintaining the real

23 property, and roads, buildings, and other structures and

24 improvements functionally related to the qualified use shall

25 be treated as real property devoted to the qualified use.

(19) "Qualified woodland" means any real property that:

(a) is used in timber operations; and

(b) is an identifiable area of land, such as an acre or other area, for which records are normally maintained in conducting timber operations.

(20) "Student" means an individual as defined by section 151(e)(4) of the Internal Revenue Code.

(21) "Timber operations" means:

(a) the planting, cultivating, caring for, or cutting of trees; or

(b) the preparation, other than milling, of trees for market.

Section 3. Section 72-16-332, MCA, is amended to read:

"72-16-332. Property acquired from decedent defined.

Property is considered to have been acquired from the decedent if the property:

(1) is so considered under section 1014(b) of the Internal Revenue Code;

(2) is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary request; or

(3) is acquired by any person from a trust in satisfaction of a right which such person has by reason of the death of the decedent to receive from the trust a specific dollar amount that is the equivalent of a pecuniary

request to the extent the property is includable in the gross estate of the decedent."

Section 4. Section 72-16-333, MCA, is amended to read:

"72-16-333. Alternate valuation of certain farm or business real property -- limitation. (1) If the decedent was at the time of his death a resident of this state and the personal representative elects to have 72-16-331 through 72-16-342 and [sections 17 through 23] apply and files an agreement with the department, the value of qualified real property for the purposes of the tax imposed by this part is its value for the use under which it qualifies under 72-16-331 ~~and 72-16-342~~ as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of (1) of this section may not exceed \$500,000 in the case of a decedent dying prior to January 1, 1983, and may not exceed \$750,000 for decedents dying thereafter."

Section 5. Section 72-16-334, MCA, is amended to read:

"72-16-334. Election of alternate valuation. An election for valuation under 72-16-331 through 72-16-342 and [sections 17 through 23] must be made within 18 months of the date of the decedent's death and must be made in such manner as the department may prescribe. The election, once made, is irrevocable."

Section 6. Section 72-16-335, MCA, is amended to read:

"72-16-335. Valuation of farms. (1) Except as provided in ~~(2)~~ (3) of this section, the value of a farm for farming purposes is determined by dividing the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of the farm over the average annual state and local real estate taxes for comparable land by the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation must be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

~~(2) If there is no comparable land from which the annual average gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, when subsection (1) is applied, "average annual net share rental" must be substituted for "average annual gross cash rental".~~

~~(2)(3) The formula in (1) and (2) of this section may not be used:~~

(a) if it is established that there is no comparable land from which the average annual gross cash rental may be determined ~~and that there is no comparable land from which the average net share rental may be determined;~~ or

(b) if the personal representative elects to have the

value of the farm for farming purposes determined under 72-16-336."

Section 7. Section 72-16-337, MCA, is amended to read:

"72-16-337. Application to certain business interests -- department rules. (1) The department shall prescribe regulations setting forth the application of 72-16-331 through 72-16-342 and ~~[sections 17 through 23]~~ in the case of an interest in a partnership, corporation, or trust that, with respect to the decedent, is an interest in a closely held business within the meaning of 72-16-453.

~~(2) For the purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs must be treated as a present interest."~~

Section 8. Section 72-16-338, MCA, is amended to read:

"72-16-338. Disposition or failure to use for qualified use -- additional tax. (1) There is hereby imposed an additional inheritance tax if within 15 10 years after the decedent's death and before the death of the qualified heir:

(a) the qualified heir disposes of any interest in qualified real property other than by a disposition to a member of his family; or

(b) the qualified heir ceases to use for the qualified use the qualified real property which was acquired or passed

from the decedent.

(2) The amount of additional tax imposed by (1) of this section with respect to any interest is the amount equal to the lesser of:

(a) the adjusted tax difference attributable to such interest; or

(b) the excess of the amount realized with respect to the interest or in any case other than a sale or exchange at arm's length, the fair market value of the interest over the value of the interest determined under 72-16-333.

(3) For the purposes of (2) of this section, the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate as determined under

(4) of this section as the excess of the value of such interest for purposes of the Montana inheritance tax, determined without regard to 72-16-331 through 72-16-342 and ~~sections 17 through 23~~, over the value of such interest determined under 72-16-333 bears to a similar excess determined for all qualified real property.

(4) For the purposes of (3) of this section, "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for 72-16-333 over the tax liability. For the purposes of this subsection, "tax liability" means the tax imposed by Title 72, chapter

16.

(5) For the purposes of this section, if the qualified heir disposes of a portion of the interest acquired by or passing to such heir or a predecessor qualified heir, or there is a cessation of use of such a portion, the value determined under 72-16-333 taken into account under (2)(b) of this section with respect to such portion shall be its pro rata share of the value of the interest and the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this section with respect to all prior transactions involving portions of the interest.

~~(6) If the date of the disposition or cessation occurs more than 120 months and less than 180 months after the date of the death of the decedent, the amount of the tax imposed by this section shall be reduced, but not below zero, by an amount determined by multiplying the amount of the tax determined without regard to this subsection by a fraction in which the numerator is the number of full months after the death in excess of 120 and the denominator is 60.~~

~~(7)~~ (6) In the case of an interest acquired from or passing from any decedent, if (a) or (b) of subsection (1) of this section applies to any portion of an interest, (b) or (a) of subsection (1) of this section, as the case may

1 be, does not apply with respect to the same portion of the
2 interest.

3 ~~(9)(11)~~ The additional tax imposed by this section is
4 due on the day that is 6 months after the date of the
5 disposition or cessation.

6 ~~(9)(11)~~ The qualified heir is personally liable for the
7 additional tax with respect to his interest unless the heir
8 has furnished bond that meets the requirements of
9 72-16-340."

10 Section 9. Section 72-16-339, MCA, is amended to read:

11 "72-16-339. When cessation of qualified use occurs.
12 For the purposes of 72-16-338, real property ceases to be
13 used for the qualified use if:

14 (1) the property ceases to be used for the qualified
15 use set forth in 72-16-331 under which the property
16 qualified under 72-16-331; or

17 (2) during any period of 3 years ending after the date
18 of the decedent's death and before the date of the death of
19 the qualified heir, there had been periods aggregating more
20 ~~than~~ 3 years or more during which:

21 (a) in the case of periods during which the property
22 was held by the decedent, there was no material
23 participation by the decedent or any member of his family in
24 the operation of the farm or other business; and

25 (b) in the case of periods during which the property

1 was held by any qualified heir, there was no material
2 participation by such qualified heir or any member of his
3 family in the operation of the farm or other business."

4 Section 10. Section 72-16-341, MCA, is amended to
5 read:

6 "72-16-341. Involuntary conversion of qualified real
7 property. (1) If there is an involuntary conversion of an
8 interest in qualified real property ~~and the qualified heir~~
9 ~~makes an election under this section~~, no tax is imposed by
10 72-16-338 on the conversion if the cost of the qualified
11 replacement property equals or exceeds the amount realized
12 on the conversion.

13 (2) If (1) of this section does not apply, the tax
14 imposed by 72-16-338, with respect to any involuntary
15 conversion, is the amount of tax that, but for this
16 subsection, would have been imposed on the conversion
17 reduced by an amount that bears the same ratio to such tax
18 as the cost of the qualified replacement property bears to
19 the amount realized on the conversion.

20 (3) (a) For the purposes of 72-16-338, any qualified
21 replacement property shall be treated in the same manner as
22 if it were a portion of the interest in qualified real
23 property that was involuntarily converted, except that with
24 respect to such qualified replacement property:

25 ~~(i)~~ the 15-year 10-year period under 72-16-338 shall

1 be extended by any period, beyond the 2-year period referred
2 to in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
3 during which the qualified heir was allowed to replace the
4 qualified real propertyt-and

5 ~~{11} the phaseout period under 72-16-338(6) shall be~~
6 ~~appropriately adjusted to take into account the extension~~
7 ~~referred to in {a}{11} of this subsection.~~

8 (b) Any tax imposed by 72-16-338 on the involuntary
9 conversion shall be treated as a tax imposed on a partial
10 disposition. The provisions of 72-16-339 shall be applied by
11 not taking into account periods after the involuntary
12 conversion and before the acquisition of the qualified
13 replacement property and by treating material participation
14 with respect to the converted property as material
15 participation with respect to the qualified replacement
16 property.

17 (4) The rules of the last sentence of section
18 1033(a)(2)(B) of the Internal Revenue Code apply for the
19 purposes of 72-16-331~~{12}~~(11)(a)(ii).

20 ~~{5}--An election under this section may be made at such~~
21 ~~time and in such manner as prescribed by the department."~~

22 Section 11. Section 72-16-342, MCA, is amended to
23 read:

24 "72-16-342. Time limitations on assessment of
25 additional tax. (1) If qualified real property is disposed

1 of or ceases to be used for a qualified use, the statutory
2 period for the assessment of any additional tax under
3 72-16-338 attributable to disposition or cessation may not
4 expire until 3 years after the date the department is
5 notified, in a manner to be prescribed by the department, of
6 the disposition or cessation or, in the case of an
7 involuntary conversion or exchange in which 72-16-341 or
8 [section 22] applies, 3 years from the date the department
9 is notified of the replacement of the converted property or
10 of an intention to replace or exchange the property.

11 (2) The additional tax may be assessed before the
12 expiration of the 3-year period referred to in (1) of this
13 section, notwithstanding the provisions of any other law or
14 rule of law that would otherwise prevent such assessment."

15 Section 12. Section 72-16-452, MCA, is amended to
16 read:

17 "72-16-452. Deferred payment for transfer of closely
18 held business interest. (1) If the value of an interest in a
19 closely held business that is taxable under Title 72,
20 chapter 16, part 3, as a transfer from a decedent who was at
21 the time of death a resident of this state exceeds 65% ~~35%~~
22 of the adjusted gross estate, the personal representative
23 may elect to pay all or part of the tax imposed by Title 72,
24 chapter 16, part 3, in 2 or more but less than 11 equal
25 installments.

1 (2) The maximum amount of tax that may be paid in
2 installments by each beneficiary is an amount that bears the
3 same ratio to the tax imposed by Title 72, chapter 16, part
4 3, as the closely held business amount passing to the
5 beneficiary bears to the clear market value of all property
6 passing to the beneficiary, without reduction for the
7 federal estate tax due or paid.

8 (3) If an election is made under (1) of this section,
9 the first installment must be paid on or before a date
10 selected by the personal representative that is not more
11 than 5 years after the date prescribed by 72-16-441 for the
12 payment of tax without interest. If, however, a credit is
13 claimed on the federal estate tax return for state death
14 taxes on the estate under the provisions of section 2011(a)
15 of the Internal Revenue Code, as amended, an amount of
16 inheritance tax due equal to the federal credit must be paid
17 within the period established in section 2011(c) of the
18 Internal Revenue Code, as amended. Each succeeding
19 installment must be paid on or before the date that is 1
20 year after the date of the preceding installment. The
21 department may for reasonable cause extend the time for
22 payment of any installment under this section, including any
23 part of an additional tax prorated to any installment, for a
24 reasonable period but not beyond the date that is 12 months
25 after the due date for the last installment.

1 (4) If an election is made under (1) of this section,
2 the tax due may not be further deferred under the provisions
3 of 72-16-438."

4 Section 13. Section 72-16-456, MCA, is amended to
5 read:

6 "72-16-456. Interests in more than one closely held
7 business. (1) Interests in two or more closely held
8 businesses, with respect to which there is taxable under
9 Title 72, chapter 16, part 3, as a transfer from the
10 decedent more than 20% ~~or more~~ of the total value of each
11 business, shall be treated as an interest in a single
12 closely held business.

13 (2) For the purposes of the 20% requirement of (1) of
14 this section, an interest in a closely held business that
15 represents the surviving spouse's interest in property held
16 by the decedent and the surviving spouse as joint tenants or
17 tenants in common shall be treated as taxable under Title
18 72, chapter 16, part 3, in determining the value of a
19 transfer from the decedent."

20 Section 14. Section 72-16-463, MCA, is amended to
21 read:

22 "72-16-463. Failure to pay installment -- acceleration
23 of payment. ~~If (1) Except as provided in subsection (2), any~~
24 ~~installment of principal or interest~~ under 72-16-451 through
25 72-16-465 is not paid on or before the date fixed for its

1 payment, including any extension of time for the payment of
2 the installment, the unpaid portion of the tax payable in
3 installments must be paid on notice and demand from the
4 department.

5 ~~(2). If any installment of principal or interest under~~
6 ~~72-16-451 through 72-16-465 is not paid on or before the~~
7 ~~date determined under subsection (1) but is paid within 6~~
8 ~~months of the date, the provisions of subsection (1) do not~~
9 ~~apply with respect to such payment; the provisions of~~
10 ~~72-16-461 may not apply with respect to the determination of~~
11 ~~interest on such payment, and there is imposed a penalty in~~
12 ~~an amount equal to the product of 5% of the amount of such~~
13 ~~payment, multiplied by the number of months or fractions~~
14 ~~thereof after such date and before payment is made."~~

15 Section 15. Section 72-16-464, MCA, is amended to
16 read:

17 "72-16-464. Acceleration of payment -- other grounds.

18 (1) The extension of time for payment of tax provided in
19 72-16-452 shall cease to apply and any unpaid portion of the
20 tax payable must be paid upon notice and demand of the
21 department if:

22 ~~(a) one-third or more in value any portion of an~~
23 ~~interest in a closely held business that qualifies under~~
24 ~~72-16-452 is distributed, sold, exchanged, or otherwise~~
25 ~~disposed of; or~~

1 ~~(b) aggregate withdrawals of if money and other~~
2 ~~property attributable to such an interest is withdrawn from~~
3 ~~the trade or business on interest in which qualifies under~~
4 ~~72-16-452, made with respect to such interest, equal or~~
5 ~~exceed one-third of the value of such trade or business and~~
6 ~~the aggregate of such distributions, sales, exchanges, or~~
7 ~~other dispositions and withdrawals equals or exceeds 50% of~~
8 ~~the value of such interest.~~

9 (2) In the case of a distribution in redemption of
10 stock to which section 303 of the Internal Revenue Code or
11 so much of section 304 of the Internal Revenue Code as
12 relates to section 303 applies:

13 (a) subsection (1)(a) of this section does not apply
14 with respect to the stock redeemed and, for the purposes of
15 subsection (1)(a), the interest in the closely held business
16 shall be considered to be such interest reduced by the value
17 of the stock redeemed; and

18 (b) subsection (1)(b) of this section does not apply
19 with respect to withdrawals of money and other property
20 distributed and, for the purposes of subsection (1)(b), the
21 value of the trade or business shall be considered to be
22 such value reduced by the amount of money and other property
23 distributed.

24 (3) Subsection (1)(a) of this section does not apply
25 to an exchange of stock pursuant to a plan of reorganization

described in (D), (E), or (F) of section 368(a)(1) of the Internal Revenue Code or to an exchange to which section 355 of the Internal Revenue Code or so much of section 356 of the Internal Revenue Code applies to section 355, but any stock received in such an exchange shall be treated for purposes of subsection (1)(e) as an interest qualifying under 72-16-452.

(4) Subsection (1)(e) of this section does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, intestate succession, or a trust created by the decedent; nor does it apply to a series of subsequent transfers of the property by reason of death of the transferor, so long as each transfer is to a member of the family within the meaning of section 267(c)(4) of the Internal Revenue Code.

Section 16. Section 72-16-603, MCA, is amended to read:

"72-16-603. Tax -- how apportioned. (1) Unless ~~Except as provided in subsection (3) and unless~~ the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The

values used in determining the tax are to be used for that purpose.

(2) If the decedent's will directs a method of apportionment of tax different from the method described in this part, the method described in the will controls.

(3) If the liabilities of persons interested in the estate as described in this part differ from those which result under the federal estate tax laws, the liabilities imposed by the federal law control and the balance of this part applies as if the resulting liabilities had been prescribed in this part."

NEW SECTION. Section 17. Special rules for surviving spouses. (1) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent", and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this section and 72-16-339 in the case of the estate of such surviving spouse, active management of a farm or other business by the surviving spouse must be treated as material participation by the surviving spouse in the operation of the farm or business.

(2) For the purposes of subsection (1), the determination of whether property is qualified real property with respect to the first decedent must be made without

1 regard to whether an election under 72-16-334 was made.

2 **NEW SECTION.** Section 18. Decedents who are retired or
3 disabled. (1) If on the date of the decedent's death, the
4 requirements of 72-16-331(16)(c)(ii) with respect to the
5 decedent for any property are not met and the decedent
6 either was receiving old-age benefits under Title II of the
7 Social Security Act for a continuous period ending on the
8 date of death or was disabled for a continuous period ending
9 on the date of death, then 72-16-331(16)(c) must be applied
10 with respect to such property by substituting "the date on
11 which the longer of the continuous periods described in
12 [section 18(1)] began" for "the date of the decedent's
13 death" in 72-16-331(16)(c).

14 (2) For purposes of 72-16-339(2)(a), if the
15 requirements of 72-16-331(16)(c)(ii) are met with respect to
16 any decedent by reason of subsection (1), the period ending
17 on the date on which the continuous period taken into
18 account under subsection (1) began must be treated as the
19 period immediately before the decedent's death.

20 **NEW SECTION.** Section 19. Active management by
21 eligible qualified heir treated as material participation.
22 (1) For purposes of 72-16-339, the active management of a
23 farm or other business by an eligible qualified heir or a
24 fiduciary of an eligible qualified heir must be treated as a
25 material participation by the eligible qualified heir in the

1 operation of the farm or business.

2 (2) In the case of an eligible qualified heir,
3 subsection (1) applies only during periods during which the
4 heir continues to be an eligible qualified heir.

5 **NEW SECTION.** Section 20. No tax if use begins within
6 two years. If the date on which the qualified heir begins to
7 use the qualified real property, hereinafter referred to as
8 the commencement date, is before the date 2 years after the
9 decedent's death:

10 (1) no tax may be imposed under 72-16-338 by reason of
11 the failure by the qualified heir to so use such property
12 before the commencement date; and

13 (2) the 10-year period under 72-16-338 must be
14 extended by the period between the decedent's death and the
15 commencement date.

16 **NEW SECTION.** Section 21. Special rule for disposition
17 of timber. In the case of qualified woodland to which an
18 election under 72-16-334 applies, if the qualified heir
19 disposes of or severs any standing timber on the qualified
20 woodland:

21 (1) the disposition or severance is treated as a
22 disposition of a portion of the interest of the qualified
23 heir in the property; and

24 (2) the additional tax imposed by 72-16-338 with
25 respect to the disposition is an amount equal to the lesser

1 of:

2 (a) the amount realized on the disposition or, in any
3 case other than a sale or exchange at arm's length, the fair
4 market value of the portion of the interest disposed or
5 severed; or

6 (b) the amount of additional tax determined under this
7 section, without regard to this subsection (2)(b), if the
8 entire interest of the qualified heir in the qualified
9 woodland had been disposed of, less the sum of the amount of
10 the additional tax imposed with respect to all prior
11 transactions involving the woodland to which subsection (2)
12 applied.

13 (3) For purposes of subsection (2), the disposition of
14 a right to sever is treated as the disposition of the
15 standing timber. The amount of additional tax imposed under
16 72-16-338 in a case in which a qualified heir disposes of
17 his entire interest in the qualified woodland must be
18 reduced by any amount determined under this section with
19 respect to such woodland.

20 **NEW SECTION.** Section 22. Exchanges of qualified real
21 property. (1) If an interest in qualified real property is
22 exchanged solely for an interest in qualified exchange
23 property in a transaction that qualifies under section 1031
24 of the Internal Revenue Code, no tax may be imposed by
25 72-16-338 by reason of the exchange.

1 (2) If an interest in qualified real property is
2 exchanged for an interest in qualified exchange property and
3 other property in a transaction that qualifies under section
4 1031 of the Internal Revenue Code, the amount of the tax
5 imposed by 72-16-338 by reason of the exchange must be the
6 amount of tax that would have been imposed on the exchange
7 under 72-16-338, without regard to this section, reduced by
8 an amount which bears the same ratio to such tax as the fair
9 market value of the other property bears to the fair market
10 value of the qualified real property exchanged. Fair market
11 value must be determined as of the time of the exchange.

12 (3) For purposes of 72-16-338:

13 (a) any interest in qualified exchange property must
14 be treated in the same manner as if it were a portion of the
15 interest in qualified real property that was exchanged;

16 (b) any tax imposed by 72-16-338 by reason of the
17 exchange must be treated as a tax imposed on a partial
18 disposition; and

19 (c) 72-16-338 must be applied by treating material
20 participation with respect to the exchanged property as
21 material participation with respect to the qualified
22 exchange property.

23 **NEW SECTION.** Section 23. Treatment of replacement
24 property acquired in transactions under section 1031 or 1033
25 of the Internal Revenue Code. (1) Except as provided in

1 subsection (2) in the case of any qualified replacement
2 property, any period during which there was ownership,
3 qualified use, or material participation with respect to the
4 replaced property by the decedent or any member of his
5 family must be treated as a period during which there was
6 such ownership, use, or material participation with respect
7 to the qualified replacement property.

8 (2) Subsection (1) does not apply to the extent that
9 the fair market value of the qualified replacement property,
10 as of the date of its acquisition, exceeds the fair market
11 value of the replaced property, as of the date of its
12 disposition.

13 (3) For purposes of this section:

14 (a) the term "qualified replacement property" means
15 any real property:

16 (i) that is acquired in an exchange which qualifies
17 under section 1031 of the Internal Revenue Code;

18 (ii) the acquisition of which results in the
19 nonrecognition of gain under section 1033 of the Internal
20 Revenue Code; or

21 (iii) that is used for the same qualified use as the
22 replaced property was being used before the exchange;

23 (b) the term "replaced property" means:

24 (i) the property transferred in the exchange that
25 qualifies under section 1031 of the Internal Revenue Code;

1 or

2 (ii) the property compulsorily or involuntarily
3 converted within the meaning of section 1033 of the Internal
4 Revenue Code.

5 Section 24. Section 72-16-491, MCA, is amended to
6 read:

7 "72-16-491. Lien for additional tax attributable to
8 farm and closely held business property. (1) In the case of
9 any interest in qualified real property within the meaning
10 of 72-16-331~~(1)~~(1), an amount equal to the adjusted tax
11 difference attributable to such interest within the meaning
12 of 72-16-338(3) is a lien in favor of the state on the
13 property in which such interest exists.

14 (2) The lien imposed by this section shall arise at
15 the time an election is filed under 72-16-333 and continues
16 with respect to any interest in the qualified real property
17 until:

18 (a) the liability for tax under 72-16-338 with respect
19 to such interest has been satisfied or has become
20 unenforceable by reason of lapse of time; or

21 (b) until it is established to the satisfaction of the
22 department that no further tax liability may arise under
23 72-16-338 with respect to such interest.

24 (3) Sections 72-16-477, 72-16-479, and 72-16-480 apply
25 with respect to a lien imposed by 72-16-491."

1 NEW SECTION. Section 25. Codification instruction.
2 Sections 17 through 23 are intended to be codified as an
3 integral part of Title 72, chapter 16, part 3, and the
4 provisions of Title 72, chapter 16, part 3, apply to
5 sections 17 through 23.
6 NEW SECTION. Section 26. Applicability date. This act
7 applies to estates of persons dying after October 1, 1983.

-End-

48th

LEGISLATIVE SESSION

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
774	3-2-83	3-16-83	3-16-83				3-16-83		
789	3-2-83	3-21-83	3-21-83				3-21-83		
807	3-2-83	3-17-83	3-17-83				3-17-83		
808	3-2-83	3-15-83	TABLED						
811	3-2-83	3-21-83	3-21-83				3-21-83		
812	3-2-83	3-21-83	3-21-83					3-21-83	
825	3-2-83	3-11-83	3-12-83					3-12-83	
825	3-17-83	3-17-83	3-17-83					3-17-83	
855	3-2-83	3-19-83	3-19-83					3-19-83	
856	3-1-83	3-23-83	3-24-83					3-24-83	
857	3-1-83	3-17-83	3-17-83				3-17-83		
879	3-1-83	RE-REFERRED	TO EDUCATION						
880	3-1-83	3-23-83	3-24-83					3-24-83	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek questioned the language contained on p. 14, lines 1-8. Mr. Vralsted explained the meaning of this language.

CONSIDERATION OF HOUSE BILL 855: Representative Ramirez, sponsor of this bill, introduced Mr. David L. Johnson as the first proponent of HB215. Mr. Johnson explained that HB855 provides for the right of renunciation by a beneficiary, the right to make installment payments of Montana State Inheritance Tax and equitable allocation of inheritance tax among beneficiaries. Mr. Johnson testified that HB855 is an effort to make Montana's laws harmonious with the federal laws. Mr. Johnson recommended amending the bill to have an effective date of October 1, 1983, used throughout the bill, and to insert the word "if" before the word "any" on p. 24, line 23. Mr. Johnson also testified that he disagrees with the fiscal note on the bill. Mr. Johnson feels there will be no loss of income to the State and the Director's conclusion about the loss is erroneous.

PROPOSERS: Mr. David N. Niklas, a member of the Tax and Probate Section, State Bar of Montana, testified that the broadening of the right of renunciation will greatly benefit families of deceased persons. He agrees with Mr. Johnson that the fiscal effect on the state will be minimal. Mr. Niklas asked for the Committee's support of HB855.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 257: Representative Ramirez opened the hearing by stating this bill was drafted at the request of the Secretary of State.

PROPOSERS: Mr. Alan D. Robertson of the Montana Secretary of State's Office, stated that HB257 is the last in a series of bills designed to update Montana's laws regarding business. He stated that this bill is designed to alleviate some of the problems the Secretary of State's Office is having by making some organizational changes and making the laws consistent with policy. Mr. Robertson testified that the State Bar of Montana has no problem with the changes provided in HB257.

Mr. Bob Murdo, representing the Business Law Section, State Bar of Montana, submitted written testimony (see attached Exhibit "A")

under a contract for deed. The purchaser now is not required to be notified of certain things which affect the property. Under HB812, holders of any purchasing interest in the property would be notified of all legal actions taken on the property.

PROPOSERS: Mr. Greg Groepper of the Montana Department of Revenue, submitted written testimony (see attached Exhibit "E") and stated that when a notice is served on the Clerk and Recorder, a Realty Transfer Certificate should also be completed to notify the Assessor's Office.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

ACTION ON HOUSE BILL 467: Senator Galt moved that HB467 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL ⁶¹⁸ ~~628~~: Senator Turnage moved that HB618 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 678: Senator Turnage moved that HB678 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 438: Senator Turnage moved that HB438 BE TABLED. This motion carried with Senator Halligan voting in opposition.

ACTION ON HOUSE BILL 705: Senator Turnage moved that Steve Brown's proposed amendments BE ADOPTED. This motion carried unanimously. Senator Turnage then made a motion that HB705 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 215: Senator Mazurek made a motion that HB215 BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 855: Senator Mazurek moved that the amendments proposed by David L. Johnson BE ADOPTED. This motion carried unanimously. Senator Mazurek moved that HB855 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 257: Senator Mazurek moved that HB 257 and the Statement of Intent BE CONCURRED IN. This motion carried unanimously.

ACTION ON HOUSE BILL 331: Senator Galt moved that the first set of amendments to HB331 (see attached Exhibit F) BE ADOPTED. This motion carried unanimously. Senator Turnage moved that HB331 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 031983

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)			✓
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
DAVID L. Johnson	Tax & Probate Section, State Bar of Montana	HB 215 HB 855	✓ ✓	
Howard E. Vreistein	Uniform Prob. & Income Act	HB 215	✓	
Robert C. Larsson	Pine Haven Christian Children's Business Law Section	HB 24		
Bob Murdo	State Bar of Montana Tax & Probate Section	HB 257	✓	
David N. Niklas	State Bar of Mont.	HB 855	✓	
Eileen F. Morgan	Montana Association of School Psychologists	HB 24	✓	
Alan D. Robertson	Sec. of State	HB 257	✓	
Geoffrey Birnbaum	Mt. Residential Child Care Assn.	HB 24	✓	
Jeremiah F. Johnson	Mt. Probation Officers Assn.	HB 24	✓	
Norma Vestre	S.R.S.	H.B. 24	✓	
Gary Loshesty	M. Hall	24	✓	
GARY LOSHESTY	JUVENILE PROBATION	HB 24	✓	

STANDING COMMITTEE REPORT

March 19,

19 83

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 855
Ramirez (Crippen)

Respectfully report as follows: That House Bill No. 855
be amended as follows:

1. Page 6, line 16.
Strike: "July"
Insert: "October"
2. Page 14, line 17.
Strike: "January"
Insert: "October"
3. Page 24, line 23.
Following: (2),
Insert: "if"

DO PASS

And, as so amended,
BE CONCURRED IN

STATUS SHEET

JUDICIARY COMMITTEE

48Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
348	Providing for prejudgment interest at the rate of 10 percent a year on a judgment greater, etc.	2/15/83	Rep. Menahan	2/21/83	Table	2/21/83
354	To authorize the use of certain mechanical or electronic machines for playing poker, etc.	2/15/83	Rep. Pavlovich	2/21/83	Table	2/21/83
355	To revise Montana's probate code with respect to renunciation of succession, etc.	2/15/83	Rep. Ramirez	2/21/83	Do Pass	2/21/83
357	Authorizing mutual aid agreements among law enforcement agencies, etc.	2/15/83	Rep.. Abrams	2/21/83	Do Pass	2/21/83
375	Creating a real estate recovery account for the payment of unsatisfied judgments against real estate salesmen and brokers, etc.	2/15/83	Rep. S.J. Hansen	2/21/83	Table	2/21/83

REPRESENTATIVE RAMIREZ questioned if this is a deterrent. MR. RACICOT replied that he was sure it was a deterrent if you have civil action and disciplinary action and he commented that he has no problems with this under certain conditions. He explained that he had submitted amendments to HB 382 and they had worked on these a long time and they felt they had come up with a bill that was acceptable - that did provide for civil liability and disciplinary action and they think that is a possibility along those lines, but they did not feel that there is such a great problem on such a daily basis, that you need to take such a radical step.

REPRESENTATIVE RAMIREZ questioned MR. RANNEY if he was opposed to the good faith exception. MR. RANNEY stated that he was not - that it was not his first choice but that it is preferable to what we have now.

REPRESENTATIVE RAMIREZ asked if he felt that a food faith standard coupled with disciplinary action would be a reasonable approach to the same problem. MR. RANNEY answered no, and he said the only substantial difference in other legislation that was drafted is that punitive damages and damages for mental distress are allowed in HB 816. He explained that the reason for that is unless you provide that kind of damages, you are not going to have lawsuits at all, because typically the average property damage may be \$10.00. He said that the real loss is a type of mental distress.

REPRESENTATIVE RAMIREZ said that he had a copy of what used to be the A.L.I. standards and they seemed to be quite significantly different and he wondered if he had any opinion as to which is the better standard. MR. RANNEY replied that he felt the standards in this bill were better than the A.L.I. standards and there was a long history to them.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 855

REPRESENTATIVE RAMIREZ explained this bill, which was requested by the legislative committee of the Montana Bar Association, and which revises Montana's probate code with respect to renunciation of succession, to revise the alternate valuation for inheritance and estate taxes, to revise the status relating to deferred payment of inheritance and estate taxes and to revise the apportionment of estate and inheritance taxes.

DAVID NIKLAS, an attorney in private practice in Helena and a member of the State Bar of Montana, the bar's section on taxation and probate, and also a member of the legislative committee of that section, said that this bill contains about four different housecleaning provisions and explained these provisions.

There were no further proponents and no opponents.

There were no questions and the hearing on this bill was closed.

HOUSE BILL 848

REPRESENTATIVE MENAHAN said that he would have the people testify on this bill and then close. This is an act providing for prejudgment interest at the rate of 10 percent a year on a judgment greater than an offer of settlement refused by the defendant.

KARLA GRAY, representing the Montana Trial Lawyers' Association, testified that prejudgment interest is a concept whose time has come; that first it provides fairness to the plaintiff or claimant and prevents unjust enrichment to the defendant. She contended that the basic premise of the tort system is to make the injured person whole - that is to fully and fairly compensate him or her for his or her losses. She continued that to truly make an injured person whole, he should receive interest on his damages to reflect the period of time over which he has not had access to compensation to which he is entitled, and to alleviate additional loss, which results because of the inherent income-producing ability of money. She concluded that justice delayed is justice denied.

REPRESENTATIVE DAVE BROWN advised the committee that the following attorneys from Butte wished to be recorded as in favor of this bill: Neil Lynch, R. Lewis Brown, Leonard Haxby, Dave Holland and Dan Sweeney.

WARD SHANAHAN, representing the Farmers' Insurance Group offered testimony in favor of this bill. See EXHIBIT I.

BOB JAMES, representing the State Farm Insurance Company and the National Association of Independent Insurers, said that if this law passes, there will be two things that happen: (1) there will be an increase in the number of lawsuits that are going to be filed and (2) the demand letter that is contained in this bill is going to be abused. He explained that the

the amendments on this bill. She explained the various problems with the amendments and stated that she understood that they wanted this bill to be consistent with Representative Kitselman's bill.

CHAIRMAN BROWN said that it was clear about the language which the committee intended, but where to put this language was the problem. He explained that six months and one year are clear, but he did not know where to put it; and he did not feel comfortable making that decision.

REPRESENTATIVE RAMIREZ wondered if they still want to reach the end result of an automatic 60-day revocation on the first offense and an automatic one-year revocation on every event thereafter. He stated he would like to see that and can this be accomplished.

CHAIRMAN BROWN stated that it was also a question of which statute would this refer to; and since the bill references 61-8-401 instead of 61-8-402, he felt that this should be in 401.

There was a suggestion that this might be best to amend on the floor.

HOUSE BILL 855

REPRESENTATIVE RAMIREZ moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE IVERSON. The motion carried unanimously.

HOUSE BILL 848

REPRESENTATIVE SPAETH moved to TABLE this bill. REPRESENTATIVE IVERSON seconded the motion.

REPRESENTATIVE SPAETH explained that he agreed totally and completely with what this bill is trying to do, but he felt that it could open a Pandora's box.

A vote was taken and the motion carried with 10 voting yes and 9 voting no. See ROLL CALL VOTE.

February 21, 19 33

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 855

First reading copy (white)
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A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452, 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603, MCA; AND PROHIBING AN APPLICABILITY DATE."

Respectfully report as follows: That HOUSE Bill No. 855

DO PASS